

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kevin Curtis Griffin et al. Art Unit: 2186
Application No.: 10/758,484 Examiner: Shane M. Thomas
Filed: January 15, 2004
For: ASYNCHRONOUS HYBRID MIRRORING SYSTEM

DECLARATION OF DOUGLAS A. SCHOLER UNDER 37 CFR §1.131

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Douglas A. Scholer, hereby declare and state:

1. I am an attorney of record for the above-identified U.S. patent application.
2. The activities noted below are submitted as evidence of the diligence of the Applicants during the time period prior to October 28, 2003 until the constructive reduction of practice of the invention on January 15, 2004, the filing date of the above-identified patent application. All of these acts took place in the United States.
3. On October 20, 2003, Scott A. Stinebruner of Wood, Herron & Evans, L.L.P. received a letter dated October 17, 2003, from Steven W. Roth of the Intellectual Property Law Department of International Business Machines Corporation, the assignee of record for the above-identified patent application, authorizing our firm to prepare and file the above-identified patent application (IBM Docket No. ROC920030367US1). It was at this time that I received a copy of the invention disclosure form for this matter, which is attached to the Declarations of the Inventors that were previously submitted. A copy of this letter, with portions thereof redacted, is enclosed as Exhibit A.
4. By December 15, 2003, I completed preparation of a first draft of the patent application. On that date, I faxed a copy of this draft to the inventors for their review. A copy of my cover letter, dated December 15, 2003, is enclosed as Exhibit B.

5. By December 18, 2003, I received comments from the inventors, which were incorporated into the patent application. A final draft of the patent application, including formal papers for signature, was forwarded to Steven W. Roth on December 18, 2003. A copy of Scott A. Stinebruner's cover letter, dated December 18, 2003, is enclosed as Exhibit C.

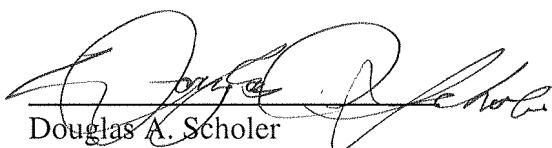
6. The final draft of the patent application and the formal papers were received by International Business Machines Corporation on December 19, 2003 and filed in the United States Patent and Trademark Office on January 15, 2004.

7. During the time period from October 20, 2003 until January 15, 2004, I was diligent in preparing and filing the above-identified patent application. For a number of years, I have prepared and filed a substantial number of patent applications on behalf of International Business Machines Corporation. During the time period at issue, I took up this particular matter in the ordinary course of my ongoing work for this client. In particular, for the time frame between October 20, 2003 and January 15, 2004, my records show that, along with filing the above-identified patent application, I personally prepared and filed at least 10 other original, non-continuing, utility patent applications on behalf of International Business Machines Corporation and other clients.

8. The statements made herein of my own knowledge are true, and all statements made on information and belief are believed to be true; further, these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Respectfully submitted,

10/31/06
Date



Douglas A. Scholer
Reg. No. 52,197

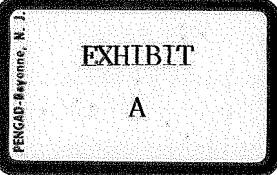


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fax 507-253-2382
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October 17, 2003

Scott Stinebruner
Wood, Herron & Evans
2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202-2917



Subject: IBM Patent Applications ROC920030366US1 and ROC920030367US1

Dear Scott:

I am sending you the following cases to prepare and file for us. Enclosed you will find the invention disclosures and related material these cases.

<u>Docket No.</u>	<u>Disclosure No.</u>	<u>Workplan Date</u>	<u>Bar Date</u>	<u>Cost Ceiling</u>
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ROC920030367US1 ROC820030684

I would like an inventor-approved draft on my desk for review one week prior to the identified work plan date. Please forward a confirmation letter to me indicating that you will be able to satisfy our timing and cost requirements.

If you feel that you will not be able to satisfy our timing and/or cost requirements, please destroy the enclosed materials and send me a letter indicating that you will not be handling these cases for us. Timely receipt of this letter would be appreciated (i.e., so that we can make alternative arrangements).

Please feel free to call me with any comments or questions you may have.

Sincerely,

[Signature] *Deb Peterson*
Steven W. Roth, Consulting Attorney

SWR/dap
Enclosures

*SAS
10/20/03*

WOOD, HERRON & EVANS, L.L.P.

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BRUCE TITTEL
DONALD F. FREI
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PATENT, TRADEMARK, COPYRIGHT
AND UNFAIR COMPETITION LAW
AND RELATED LITIGATION

EDMUND P. WOOD 1923-1968
TRUMAN A. HERRON 1935-1976
EDWARD B. EVANS 1936-1971

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STEVEN W. BENINTENDI, Ph.D.

TECHNICAL ADVISOR
HENRY M. LABODA, Ph.D.

*ADMITTED ONLY IN D.C. AND VA

December 15, 2003

VIA FACSIMILE: 507-253-6410

Michael J. McDermott
International Business Machines Corporation
Div. 7T, Dept. 47WA
3605 Highway 52 North
Rochester, Minnesota 55901-7829

Re: ROC920030367US1 - ASYNCHRONOUS HYBRID MIRRORING SYSTEM
Our File: IBM/289

ACTION: Return Application with Written Comments
RESPOND BY: As Soon As Possible

Dear Mike:

Enclosed for your, Kevin Griffin's, and Scott Helt's review is a first draft of the above-identified patent application. The application must now be reviewed by all of you for accuracy. Please review the application in detail and make any corrections, additions or deletions you feel are necessary to adequately describe the invention in such detail as to enable a person of ordinary skill in this technology to make and use the invention. In addition, when reviewing this application, please keep in mind that the application must also set forth what you believe to be the "best mode" of making and using the invention.

After you have all reviewed the application, please return the draft to us along with your written comments at your earliest convenience. We will then revise the application to a form suitable for filing in the U.S. Patent and Trademark Office.

Thank you again for allowing us to be of service.

Very truly yours,

Douglas A. Scholer
Douglas A. Scholer

DAS/jlv
Enclosure
cc: Scott A. Stinebruner, Esq. (w/o enclosure)

WOOD, HERRON & EVANS, L.L.P.

JOHN D. POFFENBERGER
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TECHNICAL ADVISOR
HENRY M. LABODA, Ph.D.

*ADMITTED ONLY IN D.C. AND VA

December 18, 2003

VIA FEDERAL EXPRESS

FedEx Tracking: 4610 6345 8015
IBM/255, 266, 281, 284, 288, 289
\$27.84/6 = \$4.64 each

Steven W. Roth, Esq.
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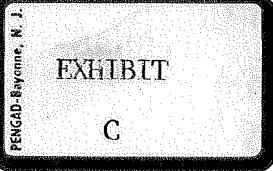
Re: ROC920030367US1 - ASYNCHRONOUS HYBRID MIRRORING SYSTEM
Our File: IBM/289

ACTION: Have Inventors Execute Formal Papers and/or File Patent Application in the United States Patent and Trademark Office
RESPOND BY: As Soon As Possible

Dear Steve:

Per your standing instructions, enclosed please find hard copies of the above-identified patent application and formal papers for the inventor's review, along with a diskette containing a copy of the application, a Declaration, an Assignment and Assignment Cover Sheet in WordPerfect 6.0 format, as well as a PDF file with the drawings. Please be aware that we did not find any prior art references in our files in regard to the above-identified patent application.

It is our understanding that you will attend to filing the application in the United States Patent and Trademark Office. Once the application is filed, please notify our office for our records. In the meantime, if you have any questions or concerns, please do not hesitate to contact me.

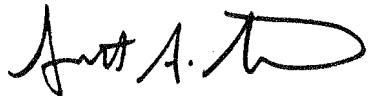


WOOD, HERRON & EVANS, LLP

Steven W. Roth, Esq.
December 18, 2003
Page 2 of 2

Thank you again for allowing us to be of service to you in patenting this invention.

Very truly yours,



Scott A. Stinebruner

SAS/jlv
Enclosures
cc: Douglas A. Scholer, Esq. (w/o enclosures)

K:\bmr\289\Roth\App & Formal Docs\Diskette Letter.wpd